



**DISCIPLINARY POLICY  
(Conduct)**

**April 2016**

## Disciplinary Policy for Academies within The Mill Academy

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## **1. Introduction**

- 1.1 This disciplinary procedure is based on the Oxfordshire model which has been drawn up in consultation with the recognised trade unions and associations: ASCL, ATL, NAHT, NASUWT, NUT and Unison.
- 1.2 Academies are required to have clear procedures for the regulation of the conduct and discipline of their staff. This procedure provides a fair and objective approach to handling cases of misconduct and has been developed in accordance with relevant employment law and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.3 Advice on the application of this procedure is available from the Academy HR Manager.
- 1.4 This procedure applies to all employees working in academies within The Mill Academy, whether support staff, teachers or headteachers. It should be read in conjunction with other relevant documents such as the School Teachers' Pay and Conditions Document (STPCD), Conditions of Service for School Teachers in England and Wales (Burgundy Book) and the National Agreement on Pay and Conditions of Service for support staff (the Green Book).
- 1.5 The term "relevant body" has been used throughout this procedure and refers to the employer which is The Mill Academy ("the Trust").
- 1.6 Where a headteacher is subject to these procedures, the process will be managed by the Chief Executive of the Trust. Where the Chief Executive is subject to these procedures, the process will be managed by the Chair of the relevant body.

## **2. Scope and purpose**

- 2.1 The Trust expects high standards of performance, conduct and behaviour from all employees. It also provides a fair and consistent method of dealing with alleged failures to observe these standards.
- 2.2 The Academy recognises the impact on employees involved in the disciplinary process and will make every effort to ensure the procedure is completed as quickly as possible.
- 2.3 Effective performance management and support should reduce the need for formal disciplinary action. The academies will manage issues of misconduct informally wherever possible, as part of the normal day to day management of staff. Any shortcomings will be brought to the employee's attention as soon as possible in an effort to achieve an improvement in an informal way.

## **3. Definitions**

### **3.1 Misconduct**

- 3.1.1 Misconduct is defined as unacceptable or improper behaviour that falls short of the Academy's expected standards.

### 3.1.2 The examples below are examples of misconduct

- Unauthorised absence (including taking unauthorised time off during the working day, term time and repeatedly leaving Academy premises without permission);
- Poor timekeeping;
- Failure to comply with the procedure for the notification of sickness absence;
- Refusal or failure to obey lawful and proper management instructions;
- Refusal or failure to comply with the Trust and/or Academy policies and standards of behaviour;
- Failure to follow or a breach of health and safety requirements;
- Failure to follow safeguarding procedures;
- Showing inappropriate information/footage to students which is outside of the curriculum or in breach of exam/controlled assessment conditions;
- Acts of bullying and/or harassment and offences against human dignity or equality;
- Incapability as a result of being intoxicated by reason of alcohol, non-prescribed or illegal drugs;
- Falsification of registers, records, expense claims or self-certification forms etc.;
- Inappropriate behaviour towards students, staff, parents, colleagues or members of the public;
- Damage to Academy property;
- Misuse of Academy property or facilities;
- Actions or behaviours including misuse of social media, which may (whether committed during or outside of the employee's hours of work) adversely affect the Academy and/or the Trust's reputation and/or the employee's suitability for the type of work they are employed to perform or acceptability to other staff or students;
- Insubordination;
- Failure to exercise proper control of students;
- Undertaking unauthorised employment.

3.1.3 This list is not exhaustive, in some circumstances these examples could be serious enough to be regarded as gross misconduct. Persistent acts of misconduct or several acts committed consecutively or over a short period of time could also be regarded as gross misconduct.

## 3.2 Gross Misconduct

3.2.1 Gross misconduct occurs where the behaviour or conduct is serious enough or falls so far below the standards required that the employment contract and any further working relationship is destroyed making trust impossible. Persistent acts of misconduct or several acts committed consecutively or over a short period of time could also be regarded as gross misconduct.

3.2.2 The following are examples of considered to be gross misconduct, this is not an exhaustive list:

- Theft, fraud or serious falsification of records such as exam results, financial/accounting records, pay or expense claims;

- Violent, offensive, abusive, neglectful or indecent behaviour;
- Bullying, harassment or victimisation;
- Gross negligence in performance of duties;
- Any criminal offence which may (whether committed during or outside of the employee's hours of work) adversely affect the Academy's reputation, the employee's suitability for the type of work they are employed to perform or acceptability to other staff or students;
- Acts considered in serious contravention to the safeguarding of children such as sexual abuse, accessing child pornography, violence, grooming or radicalisation;
- Serious insubordination;
- Actions or behaviours that fundamentally breach the relationship of trust and confidence between the Academy and the employee.

3.2.3 Even where acts of gross misconduct are believed to have taken place the formal disciplinary procedure will still be followed. A period of suspension is likely to be implemented in these circumstances, whilst the formal procedure is taking place.

#### **4. Child Protection Allegations**

4.1 Any allegations of misconduct that involve child protection issues should be dealt with in accordance with The Mill Academy's child protection policies and advice sought from the Oxfordshire Local Authority Designated Officer (LADO) within 24 hours of receiving the allegation. Action under this disciplinary procedure will only commence following instructions by the LADO.

#### **5. Capability Procedures**

5.1 Separate procedures will be followed where an employee is considered incapable of doing their job to the required standard due to a lack of professional capability (see Professional Capability Procedure) or as a result of ill health (see Managing Sickness Absence).

5.2 Where it is not clear whether the issues are of misconduct or incapability or both, the Headteacher should seek advice from the Trust's HR Adviser.

#### **6. Roles and Responsibilities**

##### **6.1 Relevant Body**

6.1.1 The relevant body will have set clear procedures for the regulation of the conduct and discipline of staff within its Academies and Headteachers must ensure that all staff are made aware of these procedures.

6.1.2 In Academies disciplinary decisions, including dismissals, can be delegated to:

- the Headteacher; or
- one or more governors; or
- one or more governors acting together with the Headteacher.

- 6.1.3 The relevant body has decided to delegate the authority to issue all disciplinary sanctions, including dismissal to the Headteacher of each Academy, under the advice and with the assistance of the Trust's HR Manager.
- 6.1.4 As and when required, an Appeal Committee must be formed to hear appeals from employees against disciplinary action issued to them such as formal warnings and dismissal. The Appeal Committee will be formed from the Directors of the Trust and only those directors which have had no previous involvement in the discretionary matter. See section on appeals.
- 6.1.5 Where a Headteacher is subject to these procedures, the process will be managed by the Chief Executive of the relevant body. Where the Chief Executive is subject to these procedures, the process will be managed by the Chair of the relevant body.

## **6.2 Academy Headteachers**

- 6.2.1 Headteachers are responsible for the overall management of standards of conduct and behaviour in their Academy, for ensuring this procedure is fairly and consistently applied in all cases, and for ensuring all Academy staff are aware of and have access to this procedure.
- 6.2.2 Headteachers must advise and seek the advice of the Trust's HR Manager of all disciplinary cases, whether informal or formal procedures are to be taken.

## **6.3 Line Managers**

- 6.3.1 Line managers are responsible for managing the performance of their staff, ensuring they make staff aware of the standards expected, their key priorities and to promptly manage underperformance or misconduct.
- 6.3.2 Where line managers believe formal disciplinary action is required, they must consult with their Headteacher who will, following initial enquiry, decide whether the circumstances warrant the application of this formal procedure.

## **6.4 Employee**

- 6.4.1 The employee is responsible for contacting their Trade Union Representative or accompanying colleague regarding dates and arrangements of hearings. The employee must be available to attend hearings when notified.

## **6.5 The Trust HR Manager**

- 6.5.1 The HR Manager will provide advice and support to the Headteachers in the application of this procedure and should attend formal hearings to provide advice, utilising the services of an external HR Adviser or Employment Lawyer as required by each individual case.

6.5.2 The HR Manager will keep records of disciplinary cases to report in an anonymised manner to the Trust's Finance & Resources Committee as required.

## **6.6 The Trust Operational Board**

6.6.1 The Operational Board is responsible for monitoring and holding Headteachers to account for their overall management of standards of conduct and behaviour in their Academy and the operation of these procedures.

## **7. General Information**

### **7.1 Key principles in handling disciplinary matters**

7.1.1 Disciplinary issues must be dealt with fairly and consistently and all parties are expected to treat the issues confidentially. No disciplinary warnings or decisions to dismiss can be taken without this disciplinary procedure being followed including a formal hearing.

7.1.2 Investigations should be carried out to establish the facts of each case before disciplinary action is considered. Employees must be informed of the allegation(s) and given the opportunity to explain their case.

7.1.3 Where practical, different people should carry out the investigation and disciplinary hearing. Employees will be allowed to be accompanied to any formal disciplinary hearing by a trade union representative or work colleague.

### **7.2 Record keeping**

7.2.1 A written record of any disciplinary matters will be kept on the employee's file. Records will be treated as confidential and kept no longer than necessary in accordance with the Data Protection Act 1998.

7.2.2 Records kept on the employee's personal file will include:

- the allegation(s) against the employee;
- the employee's response;
- findings made, actions taken and the outcome;
- the reason for actions taken;
- whether an appeal was lodged;
- the outcome of the appeal;
- subsequent developments;
- notes of any formal meetings.

7.2.3 Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the school may withhold some information.

7.2.4 A record of any disciplinary penalty issued to an employee will remain active on their record until it is spent and will then be retained on their personnel file.

## **8. Disciplinary action against trade union representatives**

8.1 Normal standards of conduct apply to employees who are trade union representatives and these disciplinary procedures should be followed in cases of misconduct. However, before proceeding to disciplinary action, the headteacher should discuss the matter with a full-time trade union official, after obtaining consent from the employee.

## **9. Support for employees affected by disciplinary action**

9.1 It is recognised that being subject to investigation and disciplinary action can be stressful for employees and for all parties involved. The school will make every effort to deal with and conclude matters promptly and encourages employees to contact their trade union representative. The Academy's Employee Assistance Programme is also available to help support staff.

## **10. The Disciplinary Procedure**

### **10.1 Stage One: Initial Discussion**

10.1.1 In cases of alleged misconduct the appropriate manager must make initial enquiries about the incident/concern as soon as possible after the event or when the event comes to light. The purpose of the discussion is to ascertain the employee's immediate response and to establish the facts to determine if any further action is needed. This is **not** a formal investigatory meeting.

10.1.2 Potential outcomes of the meeting are:

- No further action is necessary;
- Deal with the matter informally i.e. good practice discussion/mediation;
- Refer the matter to an Investigatory Meeting (could possibly include suspension of employee);

10.1.3 If the incident is deemed to be potential gross misconduct the initial discussion may be by-passed and the case progressed directly to an Investigatory Meeting.

### **10.2 Suspension**

10.2.1 Suspension is not a disciplinary penalty and should not pre-determine in any way the outcome of any investigation. Suspension can be imposed at any time throughout the investigation process. Suspension should only be considered if there are concerns about the employee remaining in the workplace, taking into account potential safeguarding issues, impacts upon students and employees and the reputational impact on the Academy.

10.2.2 Suspension periods must be kept to a minimum and circumstances under review. The suspension must be confirmed in writing and the employee remains on full pay pending an investigation.

10.2.3 Employees who are suspended pending an investigation must be available and contactable during their normal working hours and co-operate fully with any investigation.

### **10.3 Stage Two: Investigatory Meeting**

10.3.1 No formal disciplinary action will be taken until the matter has been fully investigated. Before the meeting the Investigating Officer should make enquiries regarding the concerns, which may include interviewing witnesses and presenting evidence to the employee at the meeting.

10.3.2 The employee should be given reasonable notice of the meeting in writing outlining the allegations. This is not a formal meeting and the employee does not have the right to be accompanied.

10.3.3 After the meeting the Investigating Officer will collate all the evidence and consider whether there is a case to answer. The potential outcomes are:

- No further action is necessary
- Deal with the matter informally
- Refer the matter to a formal disciplinary hearing

10.3.4 Employees who are suspended pending an investigation must be available and contactable during normal working hours and co-operate fully with the investigation.

10.3.5 The Investigating Officer should be a different person to the one who may carry out the formal disciplinary hearing if that is the action which results from the investigations. The Investigating Officer may be a member of the senior leadership, the HR Manager or HR Adviser, or a Headteacher/Senior Leader from another Academy.

10.3.6 Investigators should follow the guidance provided by ACAS in their document "Conducting Workplace Investigations" to plan and conduct the investigation and interview witnesses.

### **10.4 Allegations of criminal offences**

10.4.1 If an Academy becomes aware that an employee is subject to criminal investigation, this may not in itself be a reason for disciplinary action. The Academy should establish the facts and having taken HR advice, consider whether the matter justifies applying the disciplinary procedure.

10.4.2 It may be possible for a disciplinary investigation to run in parallel to a criminal investigation, but the Headteacher should seek advice from the Police and the

Trust's HR Adviser. An investigation by the Academy may need to be suspended where the Police advise that it may prejudice a criminal investigation. The employee will be kept informed.

10.4.3 It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action. The criminal justice system works on the basis of guilt being 'beyond reasonable doubt' whereas under employment law an employer can make a decision based on the 'balance of probability'. Academies should seek advice from the Trust's HR Adviser or Employment Lawyer.

### **10.5 Stage 3: Disciplinary Hearing**

10.5.1 The employee will be notified to attend a formal hearing in writing, the date, time and venue for the hearing and their right to be accompanied by a work colleague or Trade Union Representative. At least five working days' notice will be given unless agreed otherwise by mutual consent. The letter should state that the potential outcomes of the hearing and that one of these outcomes may be dismissal.

10.5.2 Employees should be given details of the alleged misconduct, a copy of this disciplinary procedure and receive copies of all relevant documentation which will be used as evidence, including the names of those who will be present at the Hearing. This should be sent with the notification letter.

10.5.3 Possible outcomes:

- Case dismissed and no further action is necessary
- First Written Warning
- Final Written Warning
- To demote the employee
- Dismissal with or without notice

10.5.4 Employees have the right to invite witnesses to attend on their behalf and must notify the Academy of the names of those witnesses as soon as possible and no later than three working days prior to the hearing. The Employee may submit a written response and any written evidence they would like to present at the hearing at least three working days in advance of the hearing.

10.5.5 Employees should be dismissed with notice except in the case of gross misconduct. In the case of gross misconduct the employee should be summarily dismissed with no notice.

10.5.6 Appendix 1 provides more information on how the hearing will be conducted.

10.5.7 The employee and their representative will be notified of the decision at the end of the hearing and/or will be confirmed in writing to the employee within three working days. If the outcome is dismissal the letter will include the reason for dismissal and effective date. The letter must also include details of the employee's right to appeal.

10.5.8 If the employee is unable to attend a hearing due to sickness the hearing will be re arranged upon receipt of a doctor's certificate or at the decision of the person conducting the hearing. Where the sickness absence continues for a period of one month or more the Academy will involve Occupation Health and will consider whether to hold a hearing in the employee's absence. In such circumstances the employee can if they so wish send a representative to make their case at the meeting.

## **11. Disciplinary Sanctions**

11.1 Disciplinary sanctions will normally be issued in the sequence set out below. However, serious matters of misconduct may result in an immediate final written warning or the decision to dismiss, where the hearing panel considers it to be a reasonable response based on the circumstances and facts of the case.

### **11.2 First written warning**

11.2.1 A first warning is normally issued as a first stage for misconduct. This will be in writing and sets out the nature of the misconduct and the change in behaviour required and the right of appeal. The warning will also inform the employee that further disciplinary action may be considered if there is no sustained and satisfactory improvement or change.

11.2.2 A record of the warning will remain active on the employee's record for a specified period, usually six to twelve months, at which time it will be spent and will then be retained on their personnel file.

### **11.3 Final written warning**

11.3.1 If the offence is sufficiently serious, or if there is further misconduct or a failure to improve during the currency of a prior warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to further disciplinary action resulting in dismissal (or some other action short of dismissal) and will refer to the right of appeal.

11.3.2 A record of this written warning will remain active on the employee's record for a specified period, usually of twelve months at which time it will be spent with a record retained on their personnel file, subject to achieving and sustaining satisfactory conduct or performance.

### **11.4 Dismissal with Notice**

11.4.1 The decision to dismiss an employee may result if after examining the case at a hearing the panel find:

- despite previous formal warning/s, further misconduct has occurred or there has been a failure to improve;
- the misconduct is of such a serious nature that the panel believes dismissal is a reasonable response.

11.4.2 As an alternative to dismissal, depending on the circumstances, it may be decided to demote the employee. The employee will be provided in writing the reasons for dismissal, the date on which the employment will terminate, and the right of appeal.

## **11.5 Summary Dismissal - Gross Misconduct**

11.5.1 If an employee has been found to have committed an offence that would be regarded as gross misconduct such as listed in section 3.2, the normal consequence will be dismissal without notice.

11.5.2 The employee will be provided in writing the reasons for dismissal, the date on which the employment will terminate, and the right of appeal.

## **12. Right of Appeal**

12.1 The employee has the right to appeal against disciplinary sanctions at every level. The appeal must be submitted in writing within ten working days of receiving notification of the outcome. The grounds for appeal must be given in advance of the appeal hearing. Any new evidence to be considered should be made available to the appeals panel at least three working days before the appeal hearing.

12.2 An appeal may be made on the grounds of:

- Faults in procedure
- New evidence which was not available at the first hearing
- A perverse decision
- An excessive penalty

This is an example list and is not exhaustive.

12.3 The purpose of an appeal is not necessarily to rehear the full case but to examine the grounds of the appeal, the procedures followed and the reasonableness of the outcome. The Appeals Panel will be drawn from the Directors of the relevant body; the ideal number for the Panel is three Directors. The person who made the original decision will be the respondent at the appeal hearing.

12.4 The decision of the Appeal Panel will be put in writing to the employee within three working days of the appeal hearing. The decision of the Appeals Panel is final.

12.5 Appendix 2 gives full details of conducting an appeal hearing.

## **13. Referrals to the Disclosure and Barring Service (DBS)**

13.1 Schools and Academies are required to refer to the DBS anyone who has harmed or poses a risk of harm to a child and who has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left. The DBS will consider whether to bar the person. See the DBS Referral Guide for Employers to understand when a referral may be appropriate and for a copy of the referral form.

## **14. Regulation of Teacher Misconduct**

- 14.1 In cases of serious teacher misconduct the school will make a referral to the National College for Teaching and Leadership (NCTL), which is an executive agency of the Department for Education.
- 14.2 The employee will be notified that such a referral will be made.
- 14.3 NCTL is responsible for regulating the teaching profession in England and will investigate cases of serious teacher misconduct and decide whether to refer a case to a professional conduct panel. The panel then investigates whether a prohibition order should be issued.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/401887/Teacher-misconduct-Disciplinary-Procedures-for-the-teaching-profession.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401887/Teacher-misconduct-Disciplinary-Procedures-for-the-teaching-profession.pdf)

## **15. Grievances raised during the Disciplinary Process**

- 15.1 Where an employee who is subject to formal disciplinary proceedings, wishes to raise a grievance about any related matters, this will not lead to the disciplinary process being postponed as they will have the opportunity to raise their concerns at the formal hearing.
- 15.2 If an employee wishes to raise a grievance or whistleblowing matter that is unrelated to the disciplinary proceedings, it will be dealt with separately and concurrently in according with the Academy's grievance or whistleblowing procedure.

## **16. Accessibility**

- 16.1 If any aspect of this procedure causes difficulty on account of a disability or if English is not the employee's first language, or if you need particular assistance or adjustments to attend meetings, contact the Academy at the earliest opportunity.

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## **Annex 1**

### **Conduct of a Disciplinary Hearing**

1. The Chair introduces those present.
2. The Chair invites the person presenting the case against the employee to identify the areas of alleged default and to bring forward any witnesses or witness statements.
3. The Chair invites the employee and her/his representative to ask questions.
4. The Chair asks questions of the person presenting the case.
5. The Chair invites the employee and/or representative to respond in full to the case presented against them and to bring forward any witnesses or witness statements.
6. The Chair invites the person presenting the case against the employee to ask any questions.
7. The Chair, if appropriate, asks questions of either party her/himself. Either party is invited to address to the chair any comment arising from the question or the reply.
8. The Chair invites the person presenting the case to summarise it. No new evidence can be presented at this stage.
9. The Chair invites the employee or her/his representative to summarise their case. No new evidence can be presented at this stage.
10. The Chair asks both parties to withdraw while s/he gives consideration to the case and comes to a conclusion. If the Chair needs to clarify any point with one or both of the parties, both parties should be recalled.
11. The Chair will call back both parties either to announce the decision or to advise that a decision will be communicated in writing within three working days.

## **Annex 2**

### **Conduct of an Appeal Hearing**

1. The Chair invites the employee to present their case for appeal.
2. The Chair invites the Headteacher/Academy respondent to ask questions.
3. The Chair invites members of the appeal panel to ask questions of the employee.
4. The Chair invites the Headteacher/Academy respondent to respond to the case presented.
5. The Chair invites the employee to ask questions.
6. The Chair invites members of the appeal panel to ask questions of the employer.
7. The Chair invites the employee to summarise the case.
8. The Chair invites the Headteacher/Academy respondent to summarise the case.
9. Both parties withdraw leaving the panel to reach a decision.
10. All parties reconvene for decision to be communicated, or if necessary, informed that the decision will be communicated in writing within three working days.